

N. KEITH CHAMBERS
EXECUTIVE DIRECTOR

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:)	
)	
ROBERT KINGERY,)	
)	
Complainant,)	
)	Charge No.: 2006CA2763
and)	EEOC No.: N/A
)	ALS No.: 07-232
SPEEDWAY SUPERAMERICA LLC,)	
)	Judge Lester G. Bovia, Jr.
Respondent.)	

RECOMMENDED ORDER AND DECISION

This matter has come to be heard on Respondent's Motion to Dismiss ("Motion"). Although he was properly served, Complainant did not file a response to the Motion.

The Illinois Department of Human Rights ("Department") is an additional statutory agency that has issued state actions in this matter. Therefore, the Department is an additional party of record. Moreover, the Department was duly served with the Motion and given an opportunity to be heard. Accordingly, this matter is now ready for disposition.

FINDINGS OF FACT

The following facts were derived from the record file in this case. These findings did not require, and were not the result of, credibility determinations.

1. Respondent hired Complainant in or about July 2003.
2. Respondent discharged Complainant on January 19, 2006.
3. Complainant alleges that Respondent discharged him due to his race, age, and alleged physical and mental handicaps. Respondent denies that Complainant's discharge constituted unlawful discrimination.

4. Complainant filed a charge with the Department on April 18, 2006. Accordingly, the Department's 365-day time period to conduct its investigation was scheduled to expire on April 18, 2007.

5. Complainant properly could have filed a complaint on his own behalf with the Commission during the 30 days immediately following the expiration of the Department's 365-day investigation period (*i.e.*, during the 30-day period from April 19, 2007 to May 18, 2007).

6. Complainant filed his *pro se* complaint on March 30, 2007, approximately three weeks prematurely.

CONCLUSIONS OF LAW

1. Because the complaint was not filed within the 30-day filing window, the complaint was not properly filed.

2. Because the complaint was not properly filed, the Commission has no jurisdiction over this matter.

3. Respondent is entitled to a recommended order of dismissal with prejudice as a matter of law.

DISCUSSION

Respondent argues that the complaint in this matter should be dismissed because it was improperly filed. In the alternative, Respondent argues that the complaint fails to state a claim upon which relief may be granted.

Section 7A-102(G)(1) of the Illinois Human Rights Act requires the Department, within 365 days after the filing of a charge, to file a complaint with the Commission, or to order that no complaint be issued and dismiss the charge with prejudice. 775 ILCS 5/7A-102(G)(1). For charges filed before January 1, 2008, a complainant may file a complaint with the Commission on his own behalf during the 30 days immediately following the expiration of the Department's 365-day investigation period. Parks and City of Moline, IHRC, ALS No. 07-207, March 17, 2009. A complainant may not file a complaint outside the 30-day filing window. Id. Any

complaint filed either before or after the 30-day filing window is a nullity, and the Commission has no jurisdiction over it. Id.

The record file indicates that Complainant filed his charge with the Department on April 18, 2006. Accordingly, the Department's 365-day time period to conduct its investigation was scheduled to expire on April 18, 2007. Thus, Complainant properly could have filed his complaint only during the 30-day time period from April 19, 2007 to May 18, 2007. However, Complainant filed his complaint on March 30, 2007, approximately three weeks prematurely.

Inasmuch as Complainant has filed no response to the Motion, Complainant has offered no justification for his failure to file his complaint properly. As the Commission has noted:

We will not search the record to find reasons to deny a motion. If a motion appears valid on its face, and if the other side cannot tell us why the motion should not be granted, we will grant the motion.

Jones and Burlington N. R.R., IHRC, ALS No. 1704, June 23, 1986.

Because Complainant filed his complaint outside the 30-day filing window, the Commission has no jurisdiction over the complaint. Therefore, it must be dismissed. The dismissal on jurisdictional grounds renders moot the issue of whether the complaint adequately states a claim upon which relief may be granted.

RECOMMENDATION

Based on the foregoing, the Commission lacks jurisdiction over this matter, and Respondent is entitled to a recommended order of dismissal as a matter of law. Accordingly, it is recommended that: 1) Respondent's Motion be granted; and 2) the complaint and underlying charge be dismissed in their entirety with prejudice.

HUMAN RIGHTS COMMISSION

BY: _____

**LESTER G. BOVIA, JR.
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION**

ENTERED: February 8, 2010